

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

University Plains TIC 1-6, 8-13 LLC,
Petitioner-Appellant,

v.

City of Ames Board of Review,
Respondent-Appellee.

ORDER

**Docket Nos. 09-100-0497 through
09-100-0638; 09-100-1178
& 09-100-1179**

On May 17, 2010, the above-captioned appeal came on for a consolidated hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant University Plains TIC, 1-6, 8-13 LLC (University Plains) requested a hearing and submitted evidence in support of its petitions. Eugene Hendrickson of RubinBrown, St. Louis, Missouri, represented the appellant at hearing. The Board of Review designated City Attorney Douglas Marek as its legal representative and submitted documentary evidence in support of its decision. A digital record of the proceeding was made. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

University Plains, owner of properties located at 4912 Mortenson Road, Ames, Iowa, appeals from the Ames City Board of Review decisions reassessing the subject properties. The properties consist of a twelve building, three-story, garden-style condominium development containing 144 units and 540 bedrooms on a 10.03 acre site. The properties are marketed as student housing, and the units are rented by the bedroom to university students. The values of the clubhouse, pool, land, and model unit are apportioned to each condominium unit. All units have common ownership, are managed as a whole, and are not offered for sale individually.

The subject properties were classified as residential realty on the initial assessment of January 1, 2009, and valued collectively at \$12,948,000; individual values were assigned to each unit. University Plains protested to the Board of Review on the grounds that 1) the properties were assessed for more than authorized by law under Iowa Code section 441.37(1)(b), and 2) there had been a downward change in value under sections 441.37(1) and 441.35(3). It claimed the actual combined parcels' value is \$9,347,600 and requested a total of \$3,600,400 in relief; it also provided values it claims as the market value for each unit. The Board of Review denied the petition stating in part, "it failed to prove downward trend/market value."

University Plains then appealed to this Board on the same grounds. We note University Plains' claim of downward change in value in an assessment year is akin to a challenge on market value and a ground it has already pled before the Board of Review. See *Dedham Co-op Ass'n. v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Therefore, this Board will only consider the claim of over-assessment.

The assessed values of the subject properties and the values the taxpayer claims to be correct are set forth in the following chart:

| Parcel Number | Sq. Ft. | # Bedroom/Bath | 2009 Board of Review Value | Taxpayer Opinion of Market Value |
|---------------|------------|----------------|-------------------------------|-------------------------------------|
| 09-07-450-100 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-105 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-110 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-115 | 1,286 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-120 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-125 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-130 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-135 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-140 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-145 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-150 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-155 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-160 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-165 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-170 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-175 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-180 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-185 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-190 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-195 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-200 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-205 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-210 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-215 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-220 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-225 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-230 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-235 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-240 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-245 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-250 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-255 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-260 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-265 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-270 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-275 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-280 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-285 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-290 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-295 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-300 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-305 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-310 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-315 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-320 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-325 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-330 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |

| Parcel Number | Sq. Ft. | # Bedroom/Bath | 2009 Board of Review Value | Taxpayer Opinion of Market Value |
|---------------|------------|----------------|-------------------------------|-------------------------------------|
| 09-07-450-335 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-340 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-345 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-350 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-355 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-360 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-365 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-370 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-375 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-380 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-385 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-390 | 1,282 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-395 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-400 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-405 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-410 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-415 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-420 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-425 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-430 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-435 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-440 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-445 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-450 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-455 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-460 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-465 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-470 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-475 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-480 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-485 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-490 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-495 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-500 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-505 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-510 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-515 | 1,057 | 3/3 | \$77,200.00 | \$55,700.00 |
| 09-07-450-520 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-525 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-530 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-535 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-540 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-545 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-550 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-555 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-560 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-565 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |

| Parcel Number | Sq. Ft. | # Bedroom/Bath | 2009 Board of Review Value | Taxpayer Opinion of Market Value |
|---------------|------------|----------------|-------------------------------|-------------------------------------|
| 09-07-450-570 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-575 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-580 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-585 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-590 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-595 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-600 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-605 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-610 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-615 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-620 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-625 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-630 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-635 | 1,283 | 4/2 | \$73,730.00 | \$67,700.00 |
| 09-07-450-640 | 1,296 | 4/4 | \$94,730.00 | \$68,400.00 |
| 09-07-450-645 | 1,296 | 4/4 | \$94,730.00 | \$68,400.00 |
| 09-07-450-650 | 1,296 | 4/4 | \$94,730.00 | \$68,400.00 |
| 09-07-450-655 | 1,296 | 4/4 | \$94,730.00 | \$68,400.00 |
| 09-07-450-660 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-665 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-670 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-675 | 1,296 | 4/4 | \$94,680.00 | \$68,400.00 |
| 09-07-450-680 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-685 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-690 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-705 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-710 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-715 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-720 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-725 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-730 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-735 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-740 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-745 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-750 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-755 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-760 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-765 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-770 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-775 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-780 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-785 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-790 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-795 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-800 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-805 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-810 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |

| Parcel Number | Sq. Ft. | # Bedroom/Bath | 2009 Board of Review Value | Taxpayer Opinion of Market Value |
|---------------|---------|----------------|----------------------------|----------------------------------|
| 09-07-450-815 | 1,283 | 4/2 | \$93,730.00 | \$67,700.00 |
| 09-07-450-695 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |
| 09-07-450-700 | 1,296 | 4/4 | \$94,690.00 | \$68,400.00 |

Eugene Hendrickson, on behalf of University Plains, testified regarding an appraisal and pro forma completed in 2006 by appraisers from Cushman & Wakefield, Rosemont, Illinois, which valued the property as an apartment in 2006 at \$13,200,000. Hendrickson testified that projections made in 2006 did not take place. If submitted to show the fair market value for January 1, 2009, the appraisal would have limited value as it was completed in 2006. But the appraisal contains net operating income (NOI) projections for 2007 and 2008. And University Plains submitted the appraisal to illustrate that the appraisal's conclusion of value was based on income projections that proved too high. We also note the appraisal valued the property as an apartment, not as individual residential condominium units as it should be valued for 2009 assessment purposes.

The 2006 appraisal considered older sales outside of Iowa. Both the age and locations of the sales make them unreliable for comparison, as the appraisal was not updated to reflect the 2009 assessment date.

The pro forma estimated NOI to be \$795,000 for 2007. In 2007, the first year of operations, the net operating income (NOI) was \$778,610. For 2008, the NOI was \$528,407. We also note that NOI was capitalized at 6%. The actual data after the 2006 appraisal indicates the pro forma fell short of its projection. University Plains' new evidence was based on two years of income data, which would stabilize the income stream. This income data supports the claim that the pro forma's conclusions are not supported.

Hendrickson testified that he reviewed sales but could not find comparable properties. He believed the subject property was unique in that competing properties rented by the unit, rather than by the bedroom. Hendrickson stated he did not do the cost approach method.

Hendrickson used actual contract rent, expenses, management fees, and vacancy rate.

Hendrickson is of the opinion that with 144 three and four-bedroom units that are rented by the bedroom for a short period, month-to-month and up to one-year, that actual rent is the market rent.

Hendrickson believes the income statement of the property is consistent and supports the use of actual income to value the property. Hendrickson testified the effective gross income has decreased and expenses have increased resulting in a steady decline in NOI. This is in contrast to the 2006 appraisal which estimated an increase in NOI each year. Hendrickson derived a 9% overall capitalization rate using a 1.4% effective tax rate and the *Real Estate Research Corporation Real Estate Report for the Omaha Metro Area, 4th quarter, 2008*, for his 7.6% direct capitalization rate.

Hendrickson valued the property using the 2007 adjusted NOI of \$977,424 and averaging the adjusted NOI for 2007 with his 2008 adjusted NOI. The average adjusted NOI was \$841,282. The adjusted NOI of \$841,282 divided by the 9% overall capitalization renders a value of value of \$9,347,600. Hendrickson is of the opinion that this would be a fair assessment for January 1, 2009.

Paul Overton, Chief Deputy Assessor for the City of Ames, testified on behalf of the Board of Review. Overton testified he physically inspected the property back when it was first completed; this included viewing some of the units. He then returned to the property in May 2009 as part of his inquiry into the protest filed by University Plains with the Board of Review for the January 1, 2009, assessment. When he visited the property in May, management declined to allow him to inspect the property, but he did talk to management at the subject property's office. At this visit, a person in the management office told Overton the property was currently 90-91% pre-leased for the coming school year (presumably fall 2009 – spring 2010). Based on his knowledge of the property, Overton believes these properties are very similar to other residential condominium units that rent, and the feature that allows students to rent by the bedroom is more valuable than others that do not. He also thinks the market is moving to allow students to have their own private bathroom. Finally, he indicated that at

the time University Plains began renting on a per bedroom basis, it was the first to do so in Ames, however, he noted that now there are other property managers, mostly closer to campus, that now rent per bedroom rather than per unit. Overton did not identify the type of properties (residential condominiums or commercial apartments), address the difference in location of the properties, or whether they are comparable rents. He gave no other information regarding these properties that purportedly rent by the bedroom.

Overton testified he also surveyed property managers in Ames to determine market vacancy rates. He determined 0% to 4% vacancy rate as of January 1, 2009, which he indicated reflects 35-38% of the total units available in Ames. One problem with Overton's vacancy survey is that it was not annualized to cover a complete year and only reflected the assessment date, when student housing is at a peak, and did not include graduation and summer vacancies. And despite the Board of Review's exhibit that indicates increasing ISU student enrollment between 2006 and 2009, Overton testified these properties may have different vacancies on January 1 versus the vacancy rate in May or in the fall if they lease on shorter terms. We also note the subject property's vacancy is much higher if you add in the management use of space. An appraisal submitted by the Board of Review indicates two on-site managers and about fourteen part-time staff receive rent-free units. We note here that Hendrickson's vacancy percentage could be reduced to 9-10%, as reported by Overton from his conversation with University Plains' staff, but this would likely cause the reported expenses to increase in order to account for the bedrooms occupied by staff, and would likely end in the same valuation Hendrickson determined for the property.

Overton testified that the January 1, 2009, assessment was based on an appraisal that was completed for a January 1, 2008, appeal which ended in a settlement between the parties. Overton testified the Ames City Assessor's office does not use the *Iowa Real Property Appeal Manual*. It uses a market based computer system (CAMA) for mass appraisal. Overton testified Ames did not use

actual comparable sales, but used all residential sales in the residential market including data from single-family homes. Ames City does not use an actual sales comparisons approach. We note that by not using the *Iowa Real Property Appraisal Manual*, the City fails to comply with Iowa Code section 441.21(h), unless it is attempting to come into compliance under section 441.21(i).

An appraisal of the subject property completed by Bruce R. Gunderson of Carlson, Gunderson & Associates, Inc., Des Moines, was submitted. The appraisal was done for the Board of Review in 2008, as evidence in an appeal pending at that time. The appraisal's final estimated value for January 1, 2008, was \$12,948,000. This was the appraisal the assessor used to value the subject property for January 1, 2009. The Gunderson appraisal notes University Plains rents units on a per bedroom basis versus the typical per unit basis found in the majority of competing apartment complexes. Additionally, we note, the competing properties Gunderson refers to, however, were sold as whole complexes and not as individual residential condominiums. Also, Gunderson stated in his appraisal that the subject properties' rents were "high." This would indicate that the actual rent of these properties can be considered as market rent. Ultimately, the actual rents, if slightly high would result in a higher assessed value for the subject property. Only if the rents were below market value would they result in a value that is less than market.

The appraisal included the market approach, income approach, and cost approach. The Board of Review did not ask Gunderson to update the appraisal to reflect the January 1, 2009, assessment data. Overton testified he did not believe an update was necessary based on his knowledge of the market.

A large majority of the land sales and comparable sales used in the appraisal were from 2004 and 2005. The comparable sales used by Gunderson were not as individual condominium units, but rather apartment sales, and the values were then allocated on a per bedroom comparison. The appraisal report states the sales approach was given "some consideration," but the income approach is given

more weight. We note the income approach to value capitalized NOI of \$1,234,780 at 9.39% to arrive at an income approach to value of \$13,150,000. The NOI capitalized by Gunderson was more than twice the actual NOI reported by Hendrickson for 2008. Gunderson did not testify regarding the appraisal at hearing. We give very little weight to Gunderson's appraisal for this appeal as it reflects an appraisal commissioned for a prior appeal and contains outdated information that is not likely reflective of the January 1, 2009, assessment date.

After reviewing all the evidence in the record, neither University Plains nor the Board of Review, specifically by introducing Gunderson's appraisal, used comparable sales to value the subject property. In this case, no comparable sales of residential condominiums were presented or offered, and sales could be sparse because no condominium unit, that are like the subject property organized under Iowa Code Chapter 499B, is likely to be sold individually. These properties are "condominiums" because they have been organized under the horizontal property regime of Iowa Code Chapter 499B *on paper*. Because there are no comparables sales, other approaches may be considered to value the property for assessment under Iowa Code section 441.21(2). Actual income and expenses are reflective of market rents for this specific property.

Reviewing all the evidence, we find that the appellant has provided evidence to prove that the subject property is over-assessed. We also find that the record, when viewed as a whole, supports an assessment of \$9,347,600.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the

property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions must first be considered in arriving at market value. *Id.* If sales are not available or market value "cannot be readily established in that manner," other factors may be considered in arriving at market value. *Heritage Cablevision v. Bd. of Review of City of Mason City*, 457 N.W.2d 594, 597 (Iowa 1990); § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). We find University Plains has shown its property was assessed for more than authorized by law. But before turning to other factors such as income data, the sales comparison approach must be considered. Comparing the sales data in the 2006 and 2008 appraisals, we find that comparable sales of the subject property do not exist because it is unique. None of the sales in either appraisal was of a single investor-owned condominium unit, or an individually-owned condominium unit for that matter. The sales were all of apartment style complexes as a whole, and the total value was then allocated to the units, which would not be appropriate for the subject property as each unit is to be

valued individually. Iowa Code § 499B.11(1); see *Dinkla v. Guthrie County Bd. of Review*, 2006 WL 2422170 (Iowa Ct. App. 2006).

University Plains provided a persuasive argument that the actual rent in this case is akin to the market rent. University Plains has 144 units with 540 bedrooms that are each separately leased and rented. Essentially, this complex has 540 potential tenants. This complex is large enough, and unique enough to be its own market under the facts of this case. Further, the two years of income statements provided by University Plains shows its rents are not what they were initially expected to be under the 2006 pro forma, and nearly half the income used in the Gunderson appraisal. The income information over the two years appears to be consistent – and would indicate it is stabilized. Further, although it appears the 2009-2010 vacancy rate may be lower, the record shows the vacancy for 2007 and 2008 was higher than market vacancies of other rentals. We note, however, that the market rentals did not discern whether the properties were rented on a per bedroom basis or a per unit basis, nor did it determine which properties were residentially assessed condominium units versus commercial classified apartments. Based on all of this information, we find a preponderance of the evidence supports University Plains' claim that actual rents should be considered market rents in this unique factual scenario. Further, we find the income method presented supports the claim the property is over-assessed.

Viewing the evidence as a whole, the Appeal Board finds University Plains' claim that the subject property was assessed for more than is authorized by law is supported by a preponderance of the evidence. Accordingly, we modify the January 1, 2009, assessed values of the residential condominium units included in this appeal as determined by the Board of Review.

The Appeal Board determines that the property assessment as of January 1, 2009, is as follows:

| Parcel Number | PAAB Market Value |
|---------------|----------------------|
| 09-07-450-100 | \$68,400.00 |
| 09-07-450-105 | \$68,400.00 |
| 09-07-450-110 | \$68,400.00 |
| 09-07-450-115 | \$68,400.00 |
| 09-07-450-120 | \$68,400.00 |
| 09-07-450-125 | \$68,400.00 |
| 09-07-450-130 | \$68,400.00 |
| 09-07-450-135 | \$68,400.00 |
| 09-07-450-140 | \$68,400.00 |
| 09-07-450-145 | \$68,400.00 |
| 09-07-450-150 | \$68,400.00 |
| 09-07-450-155 | \$68,400.00 |
| 09-07-450-160 | \$55,700.00 |
| 09-07-450-165 | \$55,700.00 |
| 09-07-450-170 | \$55,700.00 |
| 09-07-450-175 | \$55,700.00 |
| 09-07-450-180 | \$55,700.00 |
| 09-07-450-185 | \$55,700.00 |
| 09-07-450-190 | \$55,700.00 |
| 09-07-450-195 | \$55,700.00 |
| 09-07-450-200 | \$55,700.00 |
| 09-07-450-205 | \$55,700.00 |
| 09-07-450-210 | \$55,700.00 |
| 09-07-450-215 | \$55,700.00 |
| 09-07-450-220 | \$55,700.00 |
| 09-07-450-225 | \$55,700.00 |
| 09-07-450-230 | \$55,700.00 |
| 09-07-450-235 | \$55,700.00 |
| 09-07-450-240 | \$55,700.00 |
| 09-07-450-245 | \$55,700.00 |
| 09-07-450-250 | \$55,700.00 |
| 09-07-450-255 | \$55,700.00 |
| 09-07-450-260 | \$55,700.00 |
| 09-07-450-265 | \$55,700.00 |
| 09-07-450-270 | \$55,700.00 |
| 09-07-450-275 | \$55,700.00 |
| 09-07-450-280 | \$68,400.00 |
| 09-07-450-285 | \$68,400.00 |
| 09-07-450-290 | \$68,400.00 |
| 09-07-450-295 | \$68,400.00 |
| 09-07-450-300 | \$68,400.00 |
| 09-07-450-305 | \$68,400.00 |
| 09-07-450-310 | \$68,400.00 |
| 09-07-450-315 | \$68,400.00 |
| 09-07-450-320 | \$68,400.00 |
| 09-07-450-325 | \$68,400.00 |
| 09-07-450-330 | \$68,400.00 |

| Parcel Number | PAAB Market Value |
|---------------|----------------------|
| 09-07-450-335 | \$68,400.00 |
| 09-07-450-340 | \$67,700.00 |
| 09-07-450-345 | \$67,700.00 |
| 09-07-450-350 | \$67,700.00 |
| 09-07-450-355 | \$67,700.00 |
| 09-07-450-360 | \$67,700.00 |
| 09-07-450-365 | \$67,700.00 |
| 09-07-450-370 | \$67,700.00 |
| 09-07-450-375 | \$67,700.00 |
| 09-07-450-380 | \$67,700.00 |
| 09-07-450-385 | \$67,700.00 |
| 09-07-450-390 | \$67,700.00 |
| 09-07-450-395 | \$67,700.00 |
| 09-07-450-400 | \$67,700.00 |
| 09-07-450-405 | \$67,700.00 |
| 09-07-450-410 | \$67,700.00 |
| 09-07-450-415 | \$67,700.00 |
| 09-07-450-420 | \$67,700.00 |
| 09-07-450-425 | \$67,700.00 |
| 09-07-450-430 | \$67,700.00 |
| 09-07-450-435 | \$67,700.00 |
| 09-07-450-440 | \$67,700.00 |
| 09-07-450-445 | \$67,700.00 |
| 09-07-450-450 | \$67,700.00 |
| 09-07-450-455 | \$67,700.00 |
| 09-07-450-460 | \$55,700.00 |
| 09-07-450-465 | \$55,700.00 |
| 09-07-450-470 | \$55,700.00 |
| 09-07-450-475 | \$55,700.00 |
| 09-07-450-480 | \$55,700.00 |
| 09-07-450-485 | \$55,700.00 |
| 09-07-450-490 | \$55,700.00 |
| 09-07-450-495 | \$55,700.00 |
| 09-07-450-500 | \$55,700.00 |
| 09-07-450-505 | \$55,700.00 |
| 09-07-450-510 | \$55,700.00 |
| 09-07-450-515 | \$55,700.00 |
| 09-07-450-520 | \$67,700.00 |
| 09-07-450-525 | \$67,700.00 |
| 09-07-450-530 | \$67,700.00 |
| 09-07-450-535 | \$67,700.00 |
| 09-07-450-540 | \$67,700.00 |
| 09-07-450-545 | \$67,700.00 |
| 09-07-450-550 | \$67,700.00 |
| 09-07-450-555 | \$67,700.00 |
| 09-07-450-560 | \$67,700.00 |
| 09-07-450-565 | \$67,700.00 |


| Parcel Number | PAAB Market Value |
|---------------|----------------------|
| 09-07-450-570 | \$67,700.00 |
| 09-07-450-575 | \$67,700.00 |
| 09-07-450-580 | \$67,700.00 |
| 09-07-450-585 | \$67,700.00 |
| 09-07-450-590 | \$67,700.00 |
| 09-07-450-595 | \$67,700.00 |
| 09-07-450-600 | \$67,700.00 |
| 09-07-450-605 | \$67,700.00 |
| 09-07-450-610 | \$67,700.00 |
| 09-07-450-615 | \$67,700.00 |
| 09-07-450-620 | \$67,700.00 |
| 09-07-450-625 | \$67,700.00 |
| 09-07-450-630 | \$67,700.00 |
| 09-07-450-635 | \$67,700.00 |
| 09-07-450-640 | \$68,400.00 |
| 09-07-450-645 | \$68,400.00 |
| 09-07-450-650 | \$68,400.00 |
| 09-07-450-655 | \$68,400.00 |
| 09-07-450-660 | \$68,400.00 |
| 09-07-450-665 | \$68,400.00 |
| 09-07-450-670 | \$68,400.00 |
| 09-07-450-675 | \$68,400.00 |
| 09-07-450-680 | \$68,400.00 |
| 09-07-450-685 | \$68,400.00 |
| 09-07-450-690 | \$68,400.00 |
| 09-07-450-705 | \$68,400.00 |
| 09-07-450-710 | \$68,400.00 |
| 09-07-450-715 | \$68,400.00 |
| 09-07-450-720 | \$68,400.00 |
| 09-07-450-725 | \$68,400.00 |
| 09-07-450-730 | \$68,400.00 |
| 09-07-450-735 | \$68,400.00 |
| 09-07-450-740 | \$68,400.00 |
| 09-07-450-745 | \$68,400.00 |
| 09-07-450-750 | \$68,400.00 |
| 09-07-450-755 | \$68,400.00 |
| 09-07-450-760 | \$67,700.00 |
| 09-07-450-765 | \$67,700.00 |
| 09-07-450-770 | \$67,700.00 |
| 09-07-450-775 | \$67,700.00 |
| 09-07-450-780 | \$67,700.00 |
| 09-07-450-785 | \$67,700.00 |
| 09-07-450-790 | \$67,700.00 |
| 09-07-450-795 | \$67,700.00 |
| 09-07-450-800 | \$67,700.00 |
| 09-07-450-805 | \$67,700.00 |
| 09-07-450-810 | \$67,700.00 |

| Parcel Number | PAAB Market Value |
|---------------|----------------------|
| 09-07-450-815 | \$67,700.00 |
| 09-07-450-695 | \$68,400.00 |
| 09-07-450-700 | \$68,400.00 |

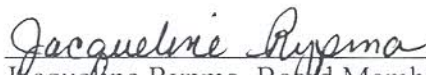
The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Story County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcels shall be corrected accordingly.

THE APPEAL BOARD ORDERS the assessment of the University Plains property, located at 4912 Mortensen Road, Ames, Iowa, as of January 1, 2009, set by the Ames City Board of Review is modified.

Dated this 27th day of August, 2010.


Richard Stradley, Presiding Officer


Karen Oberman, Board Chair


Jacqueline Rypma, Board Member

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Story County Auditor
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Nevada, IA 50201

| Certificate of Service | |
|--|--|
| The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8/27</u> , 2010. | |
| By: | <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX |
| | <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier |
| | <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other |
| Signature | <u><i>[Signature]</i></u> |